

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
06-CR-160A

DURYLL ANDERSON,

Defendant.

Currently before the Court is the defendant's second motion to reduce his sentence under 18 U.S.C. § 3582(c)(2). The Court has previously granted a motion by the defendant to reduce his sentence under § 3582(c) and U.S.S.G. § 1B1.10, as amended, pursuant to the crack cocaine amendments. In that prior order, the Court reduced the defendant's sentence from 121 months to 120 months. See Dkt. No. 28.

In the defendant's second motion, he requests to be resentenced pursuant to the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005), and Kimbrough v. United States, 552 U.S. 85 (2007). The defendant argues that since Booker rendered the guidelines advisory, and Kimbrough permits a sentencing court to disagree with the Guidelines' 100 to 1 powder/crack cocaine ratio, this Court has authority to resentence the defendant under § 3582(c) .

The defendant's argument is foreclosed by the Second Circuit's decision in Cortorreal v. United States, 486 F.3d 742 (2d Cir. 2007) (holding that the Booker decision could not be the basis for a motion to modify a sentence under § 3582(c)). Moreover, the defendant is subject to a mandatory minimum sentence of 10 years for his crime of conviction.

Accordingly, the defendant's second motion to reduce his sentence under § 3582(c) is denied.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: August 7, 2009